

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36458/36459

STATE OF IDAHO,)	2010 Unpublished Opinion No. 330
)	
Plaintiff-Respondent,)	Filed: January 27, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
GERALD LLOYD DEITZ,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Fred M. Gibler, District Judge.

Order denying I.C.R. 35 motions for reduction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before GUTIERREZ, Judge, GRATTON, Judge
and MELANSON, Judge

PER CURIAM

This appeal involves two consolidated cases. In case number 36458, Gerald Lloyd Deitz was charged with destruction or concealment of evidence with a persistent violator enhancement and with driving under the influence (DUI). Pursuant to a plea agreement, Deitz pled guilty to destruction or concealment of evidence, Idaho Code § 18-2603, with a persistent violator enhancement, I.C. § 19-2514, and the state dismissed the DUI charge. While awaiting sentencing in that case, Deitz was charged with DUI, with a persistent violator enhancement; possession of methamphetamine, with a persistent violator enhancement; eluding a peace officer, with a persistent violator enhancement; aggravated assault, with a persistent violator enhancement; resisting or obstructing an officer; leaving the scene of an accident involving vehicle damage and driving without privileges in case number 36459. Pursuant to a plea

agreement, Deitz pled guilty to DUI, I.C. §§ 18-8004, 18-8005, and to possession of a controlled substance, methamphetamine, I.C. § 37-2732(c)(1), and the state dismissed the remaining charges and the persistent violator enhancements. In case number 36458, the district court sentenced Deitz to a unified term of ten years, with five years determinate, suspended the sentence and placed Deitz on supervised probation for five years. In case number 36459, the district court sentenced Deitz to a unified sentence of ten years, with five years determinate, for the DUI, and to seven years, with five years determinate, for the possession charge, and the court retained jurisdiction. The district court ordered that the sentences in case number 36459 run concurrently with each other and consecutively with the sentence in case number 36458. After Deitz completed his rider, the district court relinquished jurisdiction. Deitz orally requested reduction of his sentences and the court reduced the sentences in case number 36459 to concurrent unified terms of ten years, with two years determinate, for DUI and seven years, with two years determinate, for the possession charge. The district court ordered the sentences in the two cases to run concurrently with the sentence in case number 36458. In case number 36458, the district court reduced the sentence to a unified term of ten years, with two years determinate. Deitz filed I.C.R. 35 motions¹ for further reduction of sentences in both cases, which the district court denied. Deitz appeals from the denial of his Rule 35 motions, contending that the district court abused its discretion by denying his Rule 35 motions.

Because the district court had previously reduced Deitz's sentences upon his oral requests, the court was without jurisdiction to consider another Rule 35 motion. I.C.R. 35; *State v. Wersland*, 125 Idaho 499, 504-05, 873 P.2d 144, 149-50 (1994). Nevertheless, a Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Assuming jurisdiction existed, applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by denying Deitz's Rule 35

¹ The Rule 35 motion in case number 36458 was untimely and the motion in case number 36459 was timely.

motions for reduction of sentences. Accordingly, the order of the district court denying Deitz's Rule 35 motions is affirmed.